

STATE OF MICHIGAN  
COURT OF APPEALS

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In the Matter of THOMAS JOHN GALLAGHER,  
IV, Minor.

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DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

MARY ANN NOWAK,

Respondent-Appellant,

and

THOMAS J. GALLAGHER, III,

Respondent.

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UNPUBLISHED

July 24, 2007

No. 275903

Bay Circuit Court

Family Division

LC No. 06-009220-NA

Before: Murphy, P.J., and Talbot and Servitto, JJ.

PER CURIAM.

Respondent Mary Ann Nowak (respondent) appeals as of right the trial court order terminating her parental rights to the minor child pursuant to MCL 712A.19b(3)(g) and (j). Respondent Thomas Gallagher has not appealed the termination of his parental rights to the child. We affirm.

The trial court may terminate a parent's parental rights to a child if the court finds that the petitioner has proven one of the statutory grounds for termination by clear and convincing evidence. MCL 712A.19b(3); *In re Trejo Minors*, 462 Mich 341, 350; 612 NW2d 407 (2000). "If the court finds that there are grounds for termination of parental rights, the court shall order termination of parental rights . . . , unless the court finds that termination of parental rights to the child is clearly not in the child's best interests." MCL 712A.19b(5); see also *Trejo, supra* at 350.

"The clearly erroneous standard shall be used in reviewing the court's findings on appeal from an order terminating parental rights." MCR 3.977(J). The review for clear error applies to both the trial court's decision that a ground for termination of parental rights was proven by clear and convincing evidence and the court's ruling regarding the child's best interests. *In re JK*, 468

Mich 202, 209; 661 NW2d 216 (2003). The trial court's determination to terminate parental rights is clearly erroneous if, although there is evidence to support it, the reviewing court is left with a definite and firm conviction that a mistake had been made on consideration of all the evidence. *Id.* at 209-210.

MCL 712A.19b(3)(g) provides for termination when "[t]he parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age."

MCL 712A.19b(3)(j) provides for termination when "[t]here is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent."

Respondent argues that the trial court erred in finding that there was clear and convincing evidence to support termination under MCL 712A.19b(3)(c), (g), (h), and (i). However, as indicated above, and as reflected in the order terminating parental rights and the transcript of the trial court's ruling from the bench, the court terminated respondent's parental rights under MCL 712A.19b(3)(g) and (j), not subsections (c), (h), and (i). Accordingly, respondent's argument that the two-year period in § 19b(3)(h) had not yet expired is irrelevant.<sup>1</sup> Respondent's arguments pursuant to § 19b(3)(c) and (i) are also irrelevant.<sup>2</sup> Respondent fails entirely to address one of the statutory grounds cited by the trial court as supporting termination, § 19b(3)(j).

Respondent argues that petitioner failed to provide adequate services and assistance to her, considering her mental impairment – developmental disability, and that the court should have given her more time and allowed her to proceed further with the case service plan so she could prove herself. Respondent contends that she was entitled to extra help from petitioner beyond that provided to a person of normal intellect, citing *In re Newman*, 189 Mich App 61; 472 NW2d 38 (1991).

In *Newman*, this Court reversed an order terminating parental rights because, in part, the respondent mother needed hands-on and repeated instructions on how to clean and maintain the family home, given her limited intellectual capacity, but the petitioner failed to adequately provide the necessary personal assistance. *Id.* at 65-66. The Court noted that this was particularly troublesome because the parents demonstrated an ability and willingness to learn. *Id.* at 66.

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<sup>1</sup> MCL 712A.19b(3)(h) provides for termination when "[t]he parent is imprisoned for such a period that the child will be deprived of a normal home for a period exceeding 2 years . . . ." There is no indication that respondent was ever imprisoned, and we cannot understand appellate counsel's reference to this subsection.

<sup>2</sup> MCL 712A.19b(3)(i) provides for termination when parental rights to siblings have been terminated. There is no indication that respondent has other children.

Here, the record reveals that petitioner made an extra effort to assist respondent. When group parenting classes were unsuccessful, petitioner provided personal, in-home parenting instruction by an MSU parenting educator. Nine home visits were made. An additional offer of in-home mental health counseling services was declined by respondent. The record is replete with examples in which respondent was provided patient, instructive direction on how to care for the child. Because of her developmental disabilities and an unwillingness to heed advice, respondent could not reach the level of being capable of providing proper care for the child despite all of petitioner's efforts. As opposed to the parents in *Newman*, respondent failed to show an ability and willingness to learn.

On the basis of the evaluations and testimony by psychologists regarding respondent's mild mental retardation and developmental disabilities, the visitation, counseling, and group parenting class failures relative to the case service plan, the evidence with respect to her capabilities, the testimony regarding respondent's failure to heed parenting advice and outright defiance at times concerning such matters as how to safely hold the child, and the testimony in general of adolescent and inappropriate behavior on respondent's part, we hold that the court did not clearly err in finding clear and convincing evidence establishing grounds for termination. While the time respondent cared for the child was short, i.e., during the first days after birth and during visitation, the evidence supported a finding that respondent, without regard to intent, failed to provide proper care for the child and there was no reasonable expectation that she would be able to provide proper care and custody within a reasonable time considering the child's age. MCL 712A.19b(3)(g). Further, the evidence supported a finding that there was a reasonable likelihood, based on respondent's conduct or capacity, that the child would be harmed if returned to respondent. MCL 712A.19b(3)(j). Finally, we cannot conclude that termination of parental rights to the child was clearly not in the child's best interests.

Affirmed.

/s/ William B. Murphy  
/s/ Michael J. Talbot  
/s/ Deborah A. Servitto